

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

UNITED STATES OF AMERICA, ) 3:12-cv-02265-SI  
 )  
Plaintiff, )  
 )  
v. ) May 30, 2014  
 )  
THE CITY OF PORTLAND, )  
 )  
Defendant. )  
\_\_\_\_\_) Portland, Oregon

TRANSCRIPT OF PROCEEDINGS

(Telephone Conference)

BEFORE THE HONORABLE MICHAEL H. SIMON

UNITED STATES DISTRICT COURT JUDGE

## APPEARANCES

1 FOR THE PLAINTIFF:

2 Adrian Brown  
United States Attorney's Office  
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4 Michelle Jones  
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7 Washington, DC 20530

8 FOR THE DEFENDANT CITY OF PORTLAND:

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David Woboril  
10 City of Portland  
Office of the City Attorney  
11 1221 SW 4th Avenue, Suite 430  
Portland, OR 97204

12  
13 FOR THE DEFENDANT PORTLAND POLICE ASSOCIATION:

14 Anil Karia  
Tedesco Law Group  
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16  
17 FOR ENHANCED AMICUS CURIAE:

18 Shauna M. Curphey  
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20 Jessica Ashlee Albies  
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22 Portland, OR 97204

23  
24 COURT REPORTER: Dennis W. Apodaca, RDR, RMR, FCRR, CRR  
United States District Courthouse  
25 1000 SW Third Avenue, Room 301  
Portland, OR 97204

1 (May 30, 2014)

2 P R O C E E D I N G S

3 (In chambers; telephone conference:)

4 THE CLERK: Your Honor, this is the time set for  
5 a telephone conference in civil 12-2265-SI, United States  
6 of America versus City of Portland.

7 Counsel, there is a court reporter present. Be  
8 sure to state your name before you speak. Here is  
9 Judge Simon.

10 THE COURT: Good afternoon, everyone.

11 COUNSEL: Good afternoon.

12 THE COURT: In addition to the list Mary just  
13 read, I do want to make sure everyone is aware, normally I  
14 hold status conferences in court. Those proceedings are  
15 open to the public. Sometimes members of the news media  
16 attend those hearings. After our last hearing by  
17 telephone, I received a request, and, frankly, it may have  
18 come before as well, but I had a communication from  
19 The Oregonian that they understood it was the practice in  
20 this district that when there are telephone status  
21 conferences in an otherwise public hearing, that news  
22 media, on request, could also participate in the call.

23 I checked with other judges and confirmed that,  
24 yes, in fact, that is the practice in this district. So  
25 it is my understanding that we do have at least one member

1 of the news media who is listening in on that call with  
2 court permission. So I just wanted to know to make sure  
3 that everyone was aware. I think you were already aware  
4 of that, but I wanted to make sure that was the case.

5 Now, we are here to find out the status of the  
6 parties' discussions. The Court has before it the motion  
7 to rule on the fairness of the pending settlement  
8 agreement between the parties, and I know that the parties  
9 wanted some more time to consult among themselves and with  
10 their clients before informing the Court that it is ready  
11 to receive the Court's ruling.

12 So let me ask, first, counsel for the plaintiff,  
13 and anyone can speak for plaintiff who wishes, just please  
14 identify yourself first, to report on the status of the  
15 matter.

16 MS. JONES: Thank you, Your Honor.  
17 Michelle Jones on behalf of the United States. Thank you  
18 for giving us the opportunity to have this time to talk  
19 amongst ourselves and attempt to reach a resolution to the  
20 question that Your Honor had posed.

21 Unfortunately, at this time we are not able to  
22 report that we have reached an agreement with respect to  
23 the annual status hearing. But what all parties are  
24 interested in is briefing Your Honor on the legal  
25 authorities to support their position on the Court's

1 authority and wanted the Court's authority to enter the  
2 status on the settlement.

3 THE COURT: Ms. Jones, how much time would you  
4 like for briefing?

5 MS. JONES: Your Honor, the United States and  
6 the City have discussed a general time frame. We haven't  
7 discussed the specific time with AMA or PPA. They are  
8 both aware that we're all doing individual briefing. The  
9 United States and the City discussed having initial briefs  
10 due on Tuesday, June 17th, and perhaps having responsive  
11 briefs due roughly a week after on Tuesday, June 25th.

12 THE COURT: So June 17th and June 25th?

13 MS. JONES: Yes, Your Honor.

14 THE COURT: Thank you, Ms. Jones.

15 Anything further for the plaintiff at this time?

16 MS. JONES: That's all we have for right now,  
17 Your Honor.

18 THE COURT: Thank you. Ms. Osoinach or  
19 Mr. Woboril, on behalf of the City.

20 MS. OSOINACH: Thank you, Your Honor.  
21 Ellen Osoinach on behalf of the City.

22 Those are the dates that we would be requesting.  
23 As Ms. Jones stated, the parties were not able to come to  
24 an agreement on how to respond to Your Honor's request,  
25 and so that's why we would like additional briefing.

1 THE COURT: Okay.

2 Mr. Karia, do you wish to be heard, sir?

3 MR. KARIA: Yes, Your Honor. Just two issues:

4 In terms of the briefing timeline, this is the first I'm  
5 hearing of the timeline from the U.S. or the City. I  
6 would ask for potentially an extra week, based on my own  
7 schedule.

8 Then in terms of the actual subject matter of  
9 the briefing, it may be helpful to hear from the Court  
10 exactly which -- I think I know which two issues we would  
11 be briefing on, but just so we're not wasting anybody's  
12 time, to have the better understanding of the two of  
13 issues that Ms. Jones spoke to.

14 THE COURT: All right. One moment.

15 Let me hear from Ms. Albies or Ms. Curphey, if  
16 you wish to speak.

17 MS. ALBIES: Thank you, Your Honor. This is  
18 Ms. Albies for the AMA Coalition. We join in the DOJ's  
19 request, and those dates are amenable to us.

20 THE COURT: All right. Then let me ask back to  
21 the plaintiff and City of Portland, any objection to the  
22 request from the Portland Police Association, Mr. Karia,  
23 to have the deadlines be June 24th and July 2nd?

24 MS. JONES: The United States doesn't have any  
25 objection to that, Your Honor.

1 MS. OSOINACH: The City has no objection.

2 THE COURT: Okay. Then let me describe briefly  
3 then what I would plan on doing, and you can all be heard  
4 on this approach. This is fine with me. I will receive  
5 additional briefing. The next round will be due  
6 June 24th. Then any party may respond to whatever is  
7 filed on June 24th not later than July 2nd.

8 I don't think we need to hold any further court  
9 hearings on this or oral argument. It would be my  
10 intention to review what everyone sends in writing and to  
11 issue my opinion on the pending motion in writing.

12 Does anyone have any objection to that  
13 procedure?

14 MS. JONES: No, Your Honor.

15 MS. OSOINACH: No objection.

16 MR. KARIA: No objection.

17 MS. ALBIES: No objection.

18 THE COURT: All right. Thank you. In response  
19 to Mr. Karia's question, it may be because it is Friday  
20 afternoon, but I could only think of one issue. If I have  
21 forgotten, and I have not looked at the file in a while,  
22 but I will tell you the issue that's on my mind. If there  
23 was another issue that you thought I had previously  
24 raised, you might be right, and I might be forgetting it  
25 right now, so I would invite you to remind me.

1 I recall making the comment that I would be  
2 prepared to find the proposed settlement agreement fair,  
3 reasonable, and adequate, provided that the Court would be  
4 able to hear on an annual basis, or more frequently if the  
5 parties wished, but certainly no less frequently than on  
6 an annual basis, a report in court from any party or  
7 representative of the party, and you know I'm referring to  
8 all four of you as "parties." If I could hear from any of  
9 the parties as to how things are going in terms of  
10 implementation of the settlement agreement as well as from  
11 the community liaison in open court.

12 I would certainly have the ability to ask  
13 questions of all four parties and the community liaison  
14 about how things are going, based, in part, on what I'm  
15 hearing and receiving. The status reports would not be  
16 evidentiary hearings. If the parties wanted to present  
17 witnesses to further explain or elaborate on what they  
18 wanted to say to me, that would be fine. But I would not  
19 envision that this would be either an evidentiary hearing  
20 or an opportunity for any party to cross-examine any  
21 witnesses that any party wanted to present.

22 It would simply be a status report to the Court  
23 on an annual basis, and I believe I previously expressed  
24 that the reason why I think that is so important is  
25 because the settlement agreement envisions a number of



1 years before all of its terms can be materially  
2 implemented, and I want to make sure that we are either  
3 proceeding with a pace and making good progress towards  
4 implementation. Or if there were a problem toward  
5 implementation, I wanted to hear about it sooner rather  
6 than later. I did not want to wait three years before the  
7 first status report and then learn about problems that may  
8 or may not be able to be remedied at that time. That was  
9 my concern. That was the issue that I recall that we  
10 discussed previously. Now, maybe you consider that to be  
11 more than one issue, but that's the issue in my mind.

12 Mr. Karia, was there another issue that was in  
13 your mind besides what I just articulated?

14 MR. KARIA: The other issue that was in my mind,  
15 Your Honor, had to do with the notion of the Court staying  
16 proceedings. I believe there have been some discussion by  
17 the United States and the City about a conditional  
18 dismissal of the case being placed on an inactive docket.  
19 Perhaps I'm off base in my recollection, and the  
20 United States or the City can correct me if I'm wrong, but  
21 that's what I understood to be the issue out there.

22 THE COURT: You are right, but I really had  
23 folded that into the first issue, and here is why:  
24 Because I believe it is important for the Court to keep a  
25 timely watch on the status of the implementation, I wanted

1 to have the status reports, the status conferences, as I  
2 have just described on an annual basis in my courtroom, as  
3 I have just described. I do have some concern if I were  
4 to conditionally dismiss the case, as envisioned by the  
5 settlement agreement and the related motion, whether I  
6 could then call the parties back on an annual basis for  
7 this status conference.

8           If all parties were to represent to me that they  
9 would consent to and agree to me calling them back on an  
10 annual basis for this status conference, including the  
11 community liaison, who I understand will report to the  
12 City, so essentially those five parties, the four parties  
13 to this lawsuit and the community liaison, if I would get  
14 representations from all four parties that they would  
15 agree to appear in my courtroom on an annual basis and  
16 report to me how the settlement is proceeding, whether  
17 there are any problems, and respond to my follow-up  
18 questions, then I would be satisfied that the case can be  
19 conditionally dismissed subject to these annual status  
20 conferences and, of course, subject to whatever rights the  
21 plaintiff has under the settlement agreement to file  
22 appropriate motions.

23           That's how I envisioned the stay issue working  
24 with the status conferences. I believe I have previously  
25 explained to folks that at least I had concern that if I

1 did not have everyone's consent on that point, then if I  
2 were to conditionally dismiss the case as envisioned in  
3 the settlement agreement and the related motions, then if  
4 I were to ask the parties to come back, it is entirely  
5 possible that one party might simply say: Well, with all  
6 due respect, you no longer have jurisdiction over us,  
7 unless and until the United States files a motion; and  
8 therefore, with all due respect, we're not coming before  
9 you.

10 That was my concern. Does that answer your  
11 question, Mr. Karia?

12 MR. KARIA: Yes, it does. Thank you, Your  
13 Honor.

14 THE COURT: Does anyone else wish to be heard on  
15 any of these matters either by way of questions or  
16 comments?

17 MS. JONES: No, Your Honor. Thank you.

18 MS. OSOINACH: Nothing from the City. Thank  
19 you.

20 THE COURT: Ms. Albies or Ms. Curphey.

21 MS. ALBIES: Nothing from AMA, Your Honor.  
22 Thank you.

23 THE COURT: Nothing further, Mr. Karia?

24 MR. KARIA: No.

25 THE COURT: I look forward to receiving

1 everyone's brief, or whoever wishes to file a brief, by  
2 June 24th. I look forward to receiving, whoever wishes to  
3 file a response, by July 2nd. Then I will take the matter  
4 under advisement July 2nd and issue a written opinion on  
5 the pending motion after July 2nd.

6 Anything further we need to discuss right now?  
7 I'm hearing nothing.

8 All right. Thank you all very much. Have a  
9 good weekend.

10 (End of proceedings.)  
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I certify, by signing below, that the foregoing is a correct transcript of the record of proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/ Dennis W. Apodaca  
DENNIS W. APODACA, RDR, RMR, FCRR, CRR  
Official Court Reporter

December 30, 2014  
DATE